

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

CAITLIN BRICE; et al.,

Plaintiffs - Appellees,

v.

ALFRED GONZALEZ,

Objector - Appellant,

v.

ZOOM VIDEO COMMUNICATIONS,

INC., a Delaware corporation,

Defendant - Appellee.

No. 23-15103

D.C. No. 3:20-cv-02155-LB  
U.S. District Court for Northern  
California, San Francisco

**NAMED PLAINTIFFS AND  
SETTLEMENT CLASS  
MEMBERS–APPELLEES’  
MOTION TO DISMISS APPEAL**

Pursuant to Ninth Circuit Rule 42-1 and Ninth Circuit General Order 2.3, Appellees Caitlin Brice, Heddi N. Cundle, Isabelle Gmerek, Cynthia Gormezano, Kristen Hartmann, M.F. and his parent Therese Jimenez, Lisa T. Johnston, Oak Life Church, Saint Paulus Lutheran Church and Stacey Simins (“Appellees”) respectfully move to dismiss the appeal filed by objector and appellant Alfredo Gonzalez (“Appellant”) for lack of prosecution – the failure to pay docket fees.

### **BACKGROUND**

This appeal relates to the settlement of the underlying class action against Zoom Video Communications, Inc., and specifically, the District Court’s approval of Appellees’ settlements with other objectors. Appellant, who hadn’t previously objected to the settlements, let alone demonstrated he was a class member with standing to object, nonetheless filed a Notice of Appeal with the District Court on January 13, 2023. *See In Re: Zoom Video Communications, Inc. Privacy Litigation*, Case No. 20-cv-02155-LB (N.D. Cal.), Dkt. No. 268. However, Appellant did not file the required \$505 filing and docket fees with his appeal.

On January 25, 2023, the Court of Appeal (“COA”) issued a Notice and Time Schedule Order to Appellant, reminding him that his payment of fees was still “past due” and that “[f]ailure to correct this deficiency may result in the dismissal of this case for failure to prosecute. See 9<sup>th</sup> Cir. R. 42-1.” *See* Notice and Time Schedule Order, COA Dkt 1-1.

On January 26, 2023, the COA issued an Order directing Appellant to pay the required fees to the District Court and file proof of such payment, or a motion to proceed in forma pauperis, in the COA, within 21 days of the Order, or by January 16, 2023. *See* Order, COA Dkt. No. 2-1.

Appellant failed to comply with the January 25, 2023 Notice or January 26, 2023 Order. To date, no filing or docketing fees have been paid.

### **CAUSE FOR DISMISSAL**

Ninth Circuit Rule 42-1 provides that:

When an appellant fails to file a timely record, *pay the docket fee*, file a timely brief, or otherwise comply with rules requiring processing the appeal for hearing, an order may be entered by the clerk dismissing the appeal. In all such instances of failure to prosecute an appeal to hearing as required, the Court may take such other action as it deems appropriate, including imposition of disciplinary and monetary sanctions on those responsible for prosecution of the appeal.

*See* 9th Cir. R. 42-1 (emphasis added).

Accordingly, the COA should dismiss Appellant's appeal for failure to prosecute and timely pay the docketing fees.<sup>1</sup>

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<sup>1</sup> Based on limited discovery conducted to date, Appellant's appeal appears to be defective and subject to dismissal on other grounds, including lack of standing, and Appellees reserve their right to raise such grounds if this appeal moves forward.

**CONCLUSION**

For the reasons stated above, Appellees respectfully request the COA to grant their motion to dismiss Appellant's appeal.

Respectfully submitted,

**COTCHETT, PITRE & McCARTHY LLP**

DATED: February 21, 2023

By: /s/ Mark C. Molumphy  
Mark C. Molumphy

Mark C. Molumphy  
Tyson C. Redenbarger  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010  
Telephone: 650.697.6000  
Facsimile: 650.697.0577  
*mmolumphy@cpmlegal.com*  
*tredenbarger@cpmlegal.com*

**AHDOOT & WOLFSON, PC**

By: /s/ Tina Wolfson  
Tina Wolfson

Tina Wolfson  
Robert R. Ahdoot  
Theodore W. Maya  
Christopher Stiner  
2600 W. Olive Avenue, Suite 500  
Burbank, CA 91505  
Telephone: 310-474-9111  
Facsimile: 310-474-8585  
*twolfson@ahdootwolfson.com*  
*rahdoot@ahdootwolfson.com*  
*tmaya@ahdootwolfson.com*  
*cstiner@ahdootwolfson.com*

*Lead Counsel for Appellees and the Class*

### **CERTIFICATE OF SERVICE**

I hereby certify that on February 21, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

**COTCHETT, PITRE & McCARTHY LLP**

By: /s/ Mark C. Molumphy  
Mark C. Molumphy

### **CERTIFICATE OF SERVICE BY MAIL**

I, the undersigned, hereby certify that:

- 1) I am an employee in the office of Cotchett, Pitre & McCarthy, LLP;  
and
- 2) On February 21, 2023 I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person hereinafter listed by depositing said envelope in the U.S. Mail, or by placing said copy into an interoffice delivery receptable located in our office of Cotchett, Pitre & McCarthy, LLP.

Alfred Gonzalez  
1440 W Taylor Street #607  
Chicago, IL 6067

Dated: February 21, 2023

Jeanine H. Acosta  
Legal Assistant

By: \_\_\_\_\_

  
Jeanine H. Acosta